



February 29, 2000

Ms. Tina Plummer  
Open Records Coordinator  
Texas Department of Mental Health and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR2000-0748

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your requests were assigned ID#s 132520 and 132521. We have combined these files and will consider the issues presented in this single ruling assigned ID# 132520.

The Texas Department of Mental Health and Mental Retardation (the “department”) received a request for information relating to a death at the Austin State Hospital. You inform us that some of the requested information has been made available to the requestor. You assert that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Thus, section 552.101 protects information that is made confidential by statute. Subchapter D of chapter 161 of the Health and Safety Code governs medical committees and medical peer review committees. Section 161.031 defines a “medical committee” as including “any committee, including a joint committee, of . . . a hospital” and further provides that “[t]he term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.” Health & Safety Code § 161.031(a)(1), (b). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]” Health & Safety Code § 161.0315(a). Section 161.032 provides in relevant part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. . . . Records, information, or reports of a medical committee . . . and records, information, or reports provided by a medical committee . . . to the governing body of a public hospital . . . are not subject to disclosure under Chapter 552, Government Code.

. . .

(c) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital[.]

Health & Safety Code § 161.032(a), (c). Based on our review of the submitted documents, we conclude that they are records, information or reports of a medical committee acting under subchapter D of chapter 161 of the Health and Safety Code. We therefore conclude that the submitted documents are confidential under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code. Accordingly, the department must withhold the submitted documents from public disclosure. *See also Barnes v. Whittington*, 751 S.W.2d 493, 495-96 (Tex. 1988) (construing predecessor statute); *Jordan v. Court of Appeals for the Fourth Judicial Dist.*, 701 S.W.2d 644, 646-48 (Tex. 1985) (same); *Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 34-36 (Tex. 1977) (same); Open Records Decision No. 591 at 2-3 (1991) (addressing scope of Health & Safety Code §§ 161.031, 161.032).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

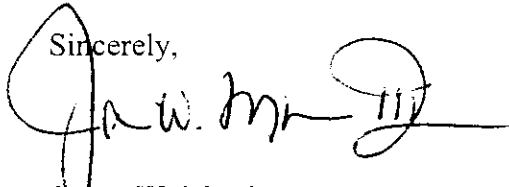
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ch

Ref: ID# 132520

Encl. Submitted documents

cc: Mr. Lucius Lomax  
Texas Observer  
307 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)